United Nations A/HRC/29/NGO/79

General Assembly

Distr.: General
9 June 2015

English only

Human Rights Council
Twenty-ninth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Human Rights Now, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-09249 (E)
1509249

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The International community must address discriminatory punishment and treatment of women and girls that remains prevalent globally

1. Background

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) began over thirty years ago. Under this convention, state parties agreed to ensure gender equality and end gender-based discrimination. Article 2(g) of CEDAW obliges state parties to repeal all national penal provisions that constitute discrimination against women. However, many states, including many state parties of CEDAW, have failed to implement the domestic legislation and enforcement reforms necessary to comply with this obligation. As a result, women continue to face serious problems (including criminal sanctions) of both a type and scale not experienced by men. Primary areas of concern are the prosecution of women under adultery and fornication laws and the discriminatory treatment against women following the crime of rape. Many states also use custom-based courts in their legal systems. These courts worsen the situations of women accused under adultery and fornication laws or women who were victims of rape.

Such practices seriously violate women's rights under international law and they work as an effective tool to control the lives of women.

2. Maldives

Under *Sharia* law as commonly applied in the Maldives, a person convicted of the offense of extramarital "fornication" (*zina*, extramarital sexual intercourse) may be subject to punishment of up to 100 lashes and one year of house arrest or exile.[1]

Although legally, both men and women can be prosecuted for *zina*, in practice women are disproportionately convicted.[2] For example, according to data from the years 2005 to 2011, more than four or five times as many women as men were convicted of and publicly flogged for *zina*.[3]

In addition to discriminatory prosecution by law enforcement, a key contributing factor to the disproportionate conviction of women is that a woman's pregnancy alone may constitute sufficient evidence to convict her of *zina*.[4]

This evidentiary standard holds even though courts frequently reject forensic evidence as inadmissible or insufficient in the prosecution of men for fornication or sexual assault.[5]

In the Maldives, an unmarried pregnant woman could be sentenced to public flogging even without witnesses to her sexual act.[6] In contrast, a man accused of rape cannot be convicted—even with solid forensic evidence—

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[1] *See* "Judicial statistics show 90 percent of those convicted for fornication are female," *Minivan News*, October 1, 2012, http://minivannews.com/politics/judicial-statistics-show-90-percent-of-those-convicted-for-fornication-are-female-44605.

[2] *See* Hope Shadow Report, at para 287, figures 15, 16, 17 (reporting criminal court data for the years 2005-2011 provided by the Maldivian government).

[3] *Id*. *See also* US Human Rights Report on Maldives at 5.

[4] US Human Rights Report on Maldives at 18 (noting that "[d]iscrimination against women was a problem. For example, by December 24, a total of 87 cases of birth out of wedlock were reported to police, of which 80 cases were investigated and 67 forwarded to the prosecutor general.)"

[5] *Id*

[6] Perversely, the Maldivian penal system's punishment of unmarried women who become pregnant leads to desperate and tragic acts of abortion and infanticide by teenage girls. *See, e.g.*, "Abortion in the Maldives: the untold story," January 7th, 2010, http://minivannews.com/society/abortion-in-the-maldives-the-untold-story-2191; "Discovery of dead baby in outdoor shower a distressing reminder of the Maldives' failure to address unwanted pregnancies", *Minivan News*, June 26th, 2012, http://minivannews.com/society/discovery-of-dead-baby-in-outdoor-shower-a-distressing-reminder-of-the-maldives-failure-to-address-unwanted-pregnancies-39815;
"Comment: Death penalty for infanticide is infantile," *Minivan News*, July 9th, 2011, http://minivannews.com/society/comment-death-penalty-for-abortion-is-infantile-22507.

without his confession or sufficient third-party witness testimony.[7] Specifically, in the absence of a confession, the accused can be convicted only by the testimony of two male witnesses or four female witnesses.[8]

Therefore, under *Sharia* law as applied by Maldivian courts, a woman's own testimony of her rape is insufficient evidence to support a conviction against a man. The testimony of any female witness including the victim is given less weight than the testimony of any male witness.[9] So, while women are disproportionately convicted and flogged for extramarital sex, men who commit rape routinely walk free.[10]

3. Afghanistan

In Afghanistan, although rape is a crime under the EVAW Law, it is not a separate offense in the Penal Code and thus the perpetrator is rarely prosecuted for rape.

When rape is prosecuted, it is often prosecuted as the crime of *zina*, punishable by up to 15 years in prison. Women who are found to have participated in extramarital sexual relations can be found guilty of *zina* regardless of whether they consented to the sexual relation.[11] Prosecution in courts of law for acts of rape and other sexual violence against women is rare. Oftentimes victims fail to report their injury due to their fears of retaliation or being themselves accused and arrested on charges of *zina* or other crimes.[12]

Female victims' testimony is often discounted or disregarded entirely by courts of law; alternatively, victims are "treated as deserving of blame of committing *zina* because of actions that are seen as having led to the rape."[13] These actions include leaving the home without permission or voluntarily being in an unsafe location.[14]

These discriminatory legal situations regarding *zina* and rape still continue under Afghan laws. Under such practice, access to justice for female victims of sexual violence cannot be ensured.

4. Pakistan

In recent years, Pakistan has made efforts to update its laws to reflect its obligations under CEDAW. In 2006, the Women's Protection Bill was passed and has brought important changes to how rape is handled by Pakistani courts.

Under the Protection of Women (Criminal Laws Amendment) Act of 2006 ("Protection of Women Act"), rape cases must be brought under the Pakistan Penal Code, not under *Sharia* law.[15] Under *Sharia* law, a rape victim is guilty of adultery unless she produces four male witnesses to the assault.[16] The Protection of Women Act removes rape cases from *Sharia* courts' jurisdictions, thereby effectively reducing the evidentiary burden on rape victims. Convictions are made based on forensic and circumstantial evidence rather than based on the testimony of four male witnesses.[17] In addition, on December 23, 2011, the legislature passed the Prevention of Anti-Women Practices Bill as part of the Criminal Law (3rd Amendment) Act of 2011. This Act criminalizes acts committed against women in the name of traditional practices.[18]

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[7] US Human Rights Report on Maldives at 16.

[8] Maldives Fourth/Fifth CEDAW Report at 30.

[9] *Id.*

[10] *See, e.g.* "Rape victims punished, failed by Maldives justice system," *Minivan News*, February 27th, 2013, http://minivannews.com/society/raped-victims-punished-failed-by-law-in-the-maldives-53760.

[11] Human Rights Watch, *Afghanistan: Moral Crimes*, *available at* http://www.hrw.org/features/afghanistan-moral-crimes

[12] *Working Group Report* at 6.

[13] *UN Committee Submission*, under the heading "Abusive Use of Vaginal Examinations and Wrongful Imprisonment of Victims(Convention Articles 2, 16)", available at http://www.hrw.org/ja/node/117001

[14] *Id.*

[15] Syed Shoaib Hasan, *Strong Feelings Over Pakistan Rape Laws*, BBC NEWS (last updated Nov. 15, 2006), *available at* http://news.bbc.co.uk/2/hi/south_asia/6152520.stm.

[16] *See id.*; *The History of Rape in Pakistan*, FOREIGN POLICY ASSOCIATION (June 25, 2013), *available at* http://foreignpolicyblogs.com/2013/06/25/the-history-of-rape-in-pakistan/, and *Veils and Jails*.

[17] Qaiser Butt, *Women's Protection Law: Federal Shariat Court Verdict Due Today*, THE EXPRESS TRIBUNE (Nov. 23, 2010), *available at* http://tribune.com.pk/story/80570/womens-protection-law-federal-shariat-court-verdict-due-today/.

[18] Zia Khan, *National Assembly Passes Landmark Women's Rights Bill*, THE EXPRESS TRIBUNE (Nov. 15, 2011), *available at* http://tribune.com.pk/story/292165/prevention-of-anti-women-practices-bill-unanimously-approved-by-na/.

Although these reforms evidence progress for women's rights and criminal legal protections, women are still suffering various violence and human rights violations. For instance, honor killings remain prevalent. [19]

5. Recommendations

Although this statement illustrates discriminatory laws and practices in the Maldives and Afghanistan, many states maintain similar laws and practices throughout the world.

Under these laws, female victims of rape and sexual violence do not get effective remedy. These victims may even be prosecuted and severely punished for having extramarital sexual intercourse.

The discriminatory laws and practices severely deter women's empowerment, human rights, and access to justice. Such laws and practices significantly contribute to the embedded culture of impunity surrounding sexual violence against women.

Pakistan made efforts to reform its legal system to eliminate discriminatory punishment against women. It is of course a positive step; however, women are still subjected to traditional execution and honor killings.

Human Rights Now (HRN) urges all states to seriously review and repeal all discriminative laws and practices causing legal and de facto sanction against women and girls.

The international community should play an active role and take concrete steps to repeal all discriminative laws and practices against women and girls.

HRN calls on both the Working Group on the issue of discrimination against women in law and in practice and the Special Rapporteur on violence against women, to conduct in depth investigation in this regard and make effective recommendations.

Additionally, we urge the Human Rights Council and General Assembly to pass resolutions to address this particular matter.

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[19] AFP, *Three Women Shot Dead in "Honour Killing"*, DAWN (last updated Sept. 16, 2013), *available at* http://www.dawn.com/news/1043276/three-women-shot-dead-in-honour-killing.